

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NOS. 10866-10867 OF 2010

IN THE MATTER OF: -

M. Siddiq (D) Thr. Lrs.

...Applicant/Appellant

VERSUS

Mahant Suresh Das & Ors. etc. etc.

...Respondents

NOTE ON HEARING DATED APRIL 27,2018

A. Arguments advanced by Mr. Raju Ramachandran, Senior Advocate

1. He began his arguments by informing the Hon'ble Court that Dr. Dhawan was not well and that if the Hon'ble Court permitted, he would advance his portion of the arguments on the issue of reference on the basis of importance alone. On being asked by the Bench, he informed them that he had taken leave from Dr. Dhawan to advance his portion of the arguments as the parties did not want to press for any adjournment.
2. Thereafter, the Bench also asked the Hindu parties, if they had any objection to Mr. Ramachandran advancing his portion of the arguments. Mr. K. Parasaran, Senior Advocate, on behalf of the Hindu Parties, submitted that they have an objection to the argument itself but they do not have any objections if Mr. Ramachandran would finish his arguments first.

3. Mr. Ramachandran began his arguments, by drawing attention of the Hon'ble Court to the 1989 order of the Learned Division Bench of the Hon'ble High Court withdrawing the suits from the Court of the Learned Addl. District and Civil Judge, Faizabad for trial and disposal by the Hon'ble High Court and requesting the Hon'ble Chief Justice of the High Court to nominate a third Judge so that a full bench may hear these matters.
4. He submitted that right from when the Suits were being heard, the matter was always treated as being special and important. The Hon'ble Court had always referred matters relating to the present dispute to larger benches. The Suits were filed between 1950-89, and a S. 24 CPC Application filed by the State was taken up by the High Court and the Suits were withdrawn from the Court of the Learned Addl. District and Civil Judge, Faizabad for trial and disposal by the Hon'ble High Court. The said suits were withdrawn, despite the fact that Hon'ble High Court of Allahabad did not have original jurisdiction unlike some other High Courts in the Country. Not only were the matters withdrawn to be heard by the High Court, the Hon'ble High Court felt that the matters were so important that a Full Bench was directed to be constituted to hear the matter in terms of order dated 10.07.1989. He further read out paragraphs 2,5,10 and 12. **[Please see Order dated July 10,1989 @ ENCLOSURE A of this note- Relevant paras- 2, 5, 10 and 12]**
5. Mr. Ramachandran further submitted that the decision of the instant matter would have a vital bearing on the social fabric of the nation since it involves the two largest communities of the Country. This is

a *sui generis* dispute which is important to the life of the nation. The importance is evident from the fact that both the sides have appealed against the decision of the Hon'ble High Court. In fact, at the stage of trial when both sides agreed and supported the withdrawal of the suits from the Court of the Learned Addl. District and Civil Judge, Faizabad for trial and disposal by the Hon'ble High Court, they voluntarily gave up one level of their right to appeal, so as to give judicial quietus to the matter. Consequently, it is apparent that these are extraordinary set of appeals and in such circumstances, it would be appropriate that a bench of at least 5 Hon'ble judges hears and decides the matter.

6. He further stated that given the extraordinary nature of the matters, it is imperative that 5 Hon'ble Judges of this Court should sit to sift through facts and appreciate evidence in the present case.
7. He then drew attention to the presidential reference dated January 7,1993. He stated that question sent to this Hon'ble Court for opinion under Article 143(1) was as follows: -

"Whether a Hindu temple or any Hindu Religious structure existed prior to the construction of Ram Janma Bhumi-Babri Masjid (including the premises of the inner and outer courtyards of such structure) in the area on which the structure stood?"

He submitted that though this Hon'ble Court refused to answer the presidential reference, however in the event this Hon'ble Court had answered the reference, the question would have had to be answered by a Bench of 5 Hon'ble Judges.

8. He then submitted that even in the past, ancillary issues concerning the present dispute, which have travelled to this Hon'ble Court, have been heard and decided by a bench of 5 Hon'ble Judges. He cited the following cases as examples:-

- i. *Mohd. Aslam alias Bhure v. Union of India* [(2003) 2 SCC 576] **[Tab 11 of Compilation of Judgments tendered by Mr. Raju Ramachandran, Senior Advocate]**
- ii. *Mohd. Aslam alias Bhure v. Union of India* [(2003) 4 SCC 1] **[Tab 12 of Compilation of Judgments tendered by Mr. Raju Ramachandran, Senior Advocate]**
- iii. *Rajeev Dhavan v. Gulshan Kumar Mahajan & Ors.* [(2014) 12 SCC 618] (para 4) **[Tab 18 of Compilation of Judgments tendered by Mr. Raju Ramachandran, Senior Advocate]**

9. He further cited instances in which this Hon'ble Court had referred matters to be decided by a larger bench, though they were comparatively innocuous. He relied on the following cases:-

- i. *Vinod Kumar Shantilal Gosalia v. Gangadhar & Ors.* (1980) Supp SCC 340 **[Tab 1 of Compilation of Judgments tendered by Mr. Raju Ramachandran, Senior Advocate]**
- ii. *Ram Jethmalani v. Union of India* [(1984) 3 SCC 696 at para 3] **[Tab 2 of Compilation of Judgments tendered by Mr. Raju Ramachandran, Senior Advocate]** – This matter was referred by Justice Venkataramiah, who was sitting as vacation judge, to the Larger Bench and he took the view that the matter

should be head by at least 7 learned Judges of this Hon'ble Court.

- iii. *Krishan Kumar v. Union of India & Ors.* [(1989) 2 SCC 504 at para 2] [**Tab 4 of Compilation of Judgments tendered by Mr. Raju Ramachandran, Senior Advocate**]
 - iv. *Syndicate Bank v. Prabhad D. Naik & Anr.* [(2002) 10 SCC 686 at para 1] [**Tab 10 of Compilation of Judgments tendered by Mr. Raju Ramachandran, Senior Advocate**]
 - v. *Chanranjeet Singh v. Raveendra Kaur* [(2008) 17 SCC] [**Tab 14 of Compilation of Judgments tendered by Mr. Raju Ramachandran, Senior Advocate**]
 - vi. *Telecom Regulatory Authority of India v. Bharat Sanchar Nigam Limited* [(2014) 3 SCC 304] [**Tab 15 of Compilation of Judgments tendered by Mr. Raju Ramachandran, Senior Advocate**]
10. He further clarified that no previous judgment of this Hon'ble Court was being doubted.
 11. Thereafter, he cited other instances where this Hon'ble Court had referred matters to larger benches on the ground of their importance alone. He placed relied on the following cases: -
 - i. *Securities and Exchanges Board of India v. Sahara Indira Real Estate Corporation Limited & Ors.* [(2014) 8 SCC 751 at para 26.5] [**Tab 17 of Compilation of Judgments tendered by Mr. Raju Ramachandran, Senior Advocate**]

- ii. *Vivek Narayan Sharma v. Union of India* [(2017) 1 SCC 388 at para 3] [Tab 19 of **Compilation of Judgments tendered by Mr. Raju Ramachandran, Senior Advocate**]
 - iii. *Sameena Begum v. Union of India & Ors.* [**Order dated 26.03.2018 rendered in WP (C) No. 222/2018 (Polygamy/Nikah Halala matter)**] [Tab 22 of **Compilation of Judgments tendered by Mr. Raju Ramachandran, Senior Advocate**]
 - iv. *In Re: Hon'ble Shri Justice C.S. Karnan* [**Order dated 9.5.2017 rendered in Suo-Motu Contempt Petition (Civil) No. 1 of 2017**] [Tab 21 of **Compilation of Judgments tendered by Mr. Raju Ramachandran, Senior Advocate**]
12. He also relied on Order 6 Rule 2 of the Supreme Court Rules of 2013 as the "enabling provision", and the Handbook for Practice and Procedure.
13. Further, he read excerpts from the 'White Paper on Ayodhya' issued by the Government of India in February, 1993 to highlight the importance of the matter in question. He read out the following paragraph of the White Paper:-

"1.35 The demolition of the Ram Janma Bhoomi-Babri Masjid structure at Ayodhya on 6-12-1992 was a most reprehensible act. The perpetrators of this deed struck not only against a place of worship, but also at the principles of secularism, democracy and the rule of law enshrined in our Constitution. In a move as sudden as it was shameful, a few thousand people managed to

outrage the sentiments of millions of Indians of all communities who have reacted to this incident with anguish and dismay.

1.36 What happened on 6-12-1992 was not a failure of the system as a whole, nor of the wisdom inherent in India's Constitution, nor yet of the power of tolerance, brotherhood and compassion that has so vividly informed the life of independent India. It was, the Supreme Court observed on that day, 'a great pity that a constitutionally elected Government could not discharge its duties in a matter of this sensitiveness and magnitude'.

14. In reply to the aforesaid white paper of the Central Government, BJP published its own white paper in April 1993, entitled as "*BJP's White Paper on Ayodhya & Ram Temple Movement*". **[Tab 20 of Compilation of Judgments tendered by Mr. Raju Ramachandran, Senior Advocate]**
15. He concluded his arguments by stating that this matter has occupied national discourse in so far as the Supreme Court had expressed its anguish, the Government of India had issued a white paper and a major political party had also published a white paper explaining its view point. In view of the foregoing, these suits have become so embroiled in the History of our nation that 5 Learned Judges are need to deliberate on the issues arising in the present matter.

B. Arguments advanced by Mr. Harish N. Salve, Senior Advocate

16. Responding to Mr. Ramachandran's argument, Mr. Salve submitted that this country had moved away from the events of 1992. The

present appeals have to be decided on evidence and in accordance with the law. He stated that the issue came in the public domain in a completely different manner when the suits were filed, however now the suit is a property dispute, so this Hon'ble Court ought to decide it like a title suit. Since it is an important case, it is already being heard by three Learned judges of this Hon'ble Court to avoid any conflict in opinion.

17. He further stated that if at a later stage, this Hon'ble Court felt necessary, the matter may be referred to a larger bench. However, factors as political sensibilities, sensitivities of my friends on my left, religious sentiments and what the TV could report in the evening should remain outside of this courtroom.
18. He also stated that, constitutional sensitivity is what matters. He distinguished Justice Venkataramiah's order by stating that the said order was on a larger constitutional question in context of the Cr. P. C. He elaborated that questions like the validity of the practice of divorce in a particular religion are on a different footing. The instant matter had been raised beyond its stature. In fact, there was not a single property dispute that may have been referred to a constitution bench. He further requested the Hon'ble Court to not take cognizance on such contentions that the case would stir religious sentiments unless Dr. Dhawan convinces this Hon'ble Court that questions concerning constitutional sensitivity are arising in this case.

C. Arguments advanced by Mr. K. Parasaran, Senior Advocate

19. Mr. Parasaran submitted that this was a Constitutional Court, which dealt with deprivation of life and liberty and hence criminal appeals were heard. He further stated that so far as civil matters are concerned the same maybe heard only if they involve a substantial question of law or of public importance and for such disputes a Three Judge bench is sufficient.
20. He clarified that in cases of statutory vires, a 5 Judges Bench maybe required. However, this issue is not such a sensitive case or a matter of national importance which would warrant the time of 5 or 7 Hon'ble Judges.
21. He then picked up issues framed on merits in the suits, and stated that such issues of fact are not something which are to be decided by 5 Hon'ble Judges of this Hon'ble Court. He stated that questions such as limitation, res judicata and of course of title were basic questions and they are not questions of such intricacy so as to warrant the time of 5 Learned Judges of this Hon'ble Court. He further elaborated by stating that suppose this Hon'ble Court was of the view that Archaeological evidence was permissible to be adduced then the report of ASI can be taken, in such circumstances where is the need for 5 Judges of this Hon'ble Court is to spend their time on such factual questions.
22. He questioned whether the appreciation of evidence is a job to be undertaken 5 judges of the Hon'ble Supreme Court. He stated that the time of the Apex Court is very precious. When the practice has always been that if 2 judges have heard the matter in the High Court then 2 judges of this Court will hear the appeal, then there is

no reason to depart from this rule. He submitted that no one disputes that the Hon'ble Court does not have the power to send the matter to a larger bench but all that is being submitted was that the present matter did not raise any such substantial questions of law which would require the time of 5 Learned Judges of this Hon'ble Court.

D. Arguments advanced by Sushil Jain, Senior Advocate

23. He referred to Article 145 and stated that only when questions pertaining to the interpretation of the Constitution arise, is matter required to be referred to bench of 5 judges.

E. Rejoinder advanced by Mr. Raju Ramachandran, Senior Advocate

24. He stated that the importance of the matter was apparent from the fact that the Suits were heard in representative capacity i.e. both the communities were treated as being represented. What was the need?
25. He further submitted that daily discourses/discussions are being done at various levels and are being reported regarding whether a temple will be built in Ayodhya or not. In such circumstances, to say that the country has moved on is to live in denial. Another bench of this very court as recently as 1.5 years ago has directed that the criminal trial regarding the demolition be heard expeditiously. A matter which affects the social fabric and ethos of the nation is important to go to 5 Hon'ble Judges.